

AMENDING THE ORGANIC ACT OF GUAM FOR THE PURPOSES OF CLARIFYING THE LOCAL JUDICIAL STRUCTURE OF GUAM

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JULY 17, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HANSEN, from the Committee on Resources,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 521]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 521) to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. JUDICIAL STRUCTURE OF GUAM.**

(a) JUDICIAL AUTHORITY; COURTS.—Section 22(a) of the Organic Act of Guam (48 U.S.C. 1424(a)) is amended to read as follows:

“(a)(1) The judicial authority of Guam shall be vested in a court established by Congress designated as the ‘District Court of Guam’, and a judicial branch of Guam which branch shall constitute a unified judicial system and include an appellate court designated as the ‘Supreme Court of Guam’, a trial court designated as the ‘Superior Court of Guam’, and such other lower local courts as may have been or shall hereafter be established by the laws of Guam.

“(2) The Supreme Court of Guam may, by rules of such court, create divisions of the Superior Court of Guam and other local courts of Guam.

“(3) The courts of record for Guam shall be the District Court of Guam, the Supreme Court of Guam, the Superior Court of Guam (except the Traffic and Small Claims divisions of the Superior Court of Guam) and any other local courts or divisions of local courts that the Supreme Court of Guam shall designate.”.

(b) JURISDICTION AND POWERS OF LOCAL COURTS.—Section 22A of the Organic Act of Guam (48 U.S.C. 1424-1) is amended to read as follows:

“SEC. 22A. (a) The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—

“(1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide;

“(2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam;

“(3) have jurisdiction to issue all orders and writs in aid of its appellate, supervisory, and original jurisdiction, including those orders necessary for the supervision of the judicial branch of Guam;

“(4) have supervisory jurisdiction over the Superior Court of Guam and all other courts of the judicial branch of Guam;

“(5) hear and determine appeals by a panel of three of the justices of the Supreme Court of Guam and a concurrence of two such justices shall be necessary to a decision of the Supreme Court of Guam on the merits of an appeal;

“(6) make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam, including procedures for the determination of an appeal en banc; and

“(7) govern attorney and judicial ethics and the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law.

“(b) The Chief Justice of the Supreme Court of Guam—

“(1) shall preside over the Supreme Court unless disqualified or unable to act;

“(2) shall be the administrative head of, and have general supervisory power over, all departments, divisions, and other instrumentalities of the judicial branch of Guam; and

“(3) may issue such administrative orders on behalf of the Supreme Court of Guam as necessary for the efficient administration of the judicial branch of Guam.

“(c) The Chief Justice of the Supreme Court of Guam, or a justice sitting in place of such Chief Justice, may make any appropriate order with respect to—

“(1) an appeal prior to the hearing and determination of that appeal on the merits; or

“(2) dismissal of an appeal for lack of jurisdiction or failure to take or prosecute the appeal in accordance with applicable laws or rules of procedure.

“(d) Except as granted to the Supreme Court of Guam or otherwise provided by this Act or any other Act of Congress, the Superior Court of Guam and all other local courts established by the laws of Guam shall have such original and appellate jurisdiction over all causes in Guam as the laws of Guam provide, except that such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam under section 22 of this Act.

“(e) The qualifications and duties of the justices and judges of the Supreme Court of Guam, the Superior Court of Guam, and all other local courts established by the laws of Guam shall be governed by the laws of Guam and the rules of such courts.”.

(c) TECHNICAL AMENDMENTS.—(1) Section 22C(a) of the Organic Act of Guam (48 U.S.C. 1424–3(a)) is amended by inserting “which is known as the Supreme Court of Guam,” after “appellate court authorized by section 22A(a) of this Act,”.

(2) Section 22C(d) of the Organic Act of Guam (48 U.S.C. 1424–3(d)) is amended—

(A) by inserting “, which is known as the Supreme Court of Guam,” after “appellate court provided for in section 22A(a) of this Act”; and

(B) by striking “taken to the appellate court” and inserting “taken to such appellate court”.

#### SEC. 2. APPEALS TO UNITED STATES SUPREME COURT.

Section 22B of the Organic Act of Guam (48 U.S.C. 1424–2) is amended by striking “: *Provided*, That” and all that follows through the end and inserting a period.

#### PURPOSE OF THE BILL

The purpose of H.R. 521 is to amend the Organic Act of Guam to clarify the local judicial structure of Guam.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1984, Congress amended the Organic Act of Guam permitting the territorial legislature to create an appellate court to hear all cases in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdic-

tion. In 1992, the 21st Guam Legislature passed legislation that created the Supreme Court of Guam to serve as the island's highest appellate court. H.R. 521 establishes this Supreme Court of Guam in U.S. law.

#### COMMITTEE ACTION

H.R. 521 was introduced on February 7, 2001, by Delegate Robert A. Underwood (D-GU). The bill was referred to the Committee on Resources. On May 22, 2002, the Full Resources Committee met to consider the bill. Delegate Underwood offered an amendment to make technical corrections to the legislation and to end the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit to review by writ of certiorari all final decisions of the highest court of Guam. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 4, 2002.*

Hon. JAMES V. HANSEN,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 521, a bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local costs).

Sincerely,

STEVEN M. LIEBERMAN  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 521—A bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam*

H.R. 521 would amend the Organic Guam Act to establish a unified judicial system in Guam, independent of the Guam legislature, consisting of an appellate court (Supreme Court) and a trial court (Superior Court of Guam). In addition, the bill would give the Supreme Court administrative authority over all local courts. CBO estimates that enacting this legislation would have no impact on the federal budget because it only affects the structure of the local judiciary system. Because enactment of H.R. 521 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The bill contains no private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). H.R. 521 contains an intergovernmental mandate as defined in UMRA, but CBO estimates that the cost of the mandate would be well the threshold established in that act (\$58 million in 2002, adjusted annually for inflation). This mandate is a preemption of authority delegated to the legislature of Guam by the Organic Act of Guam. Under that act, the local legislature currently has the authority to establish the structure of the Guam judiciary. H.R. 521 would eliminate that authority and impose a specific structure. Because this structure is similar to the existing system, however, we expect that the mandate would impose no significant costs on the government of Guam. Enacting this bill would have no impact on the budgets of other state, local, or tribal governments.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## ORGANIC ACT OF GUAM

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SEC. 22. [(a) The judicial authority of Guam shall be vested in a court of record established by Congress, designated the "District Court of Guam," and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with section 22A of this Act.]

*(a)(1) The judicial authority of Guam shall be vested in a court established by Congress designated as the "District Court of Guam", and a judicial branch of Guam which branch shall constitute a unified judicial system and include an appellate court designated as the "Supreme Court of Guam", a trial court designated as the "Superior Court of Guam", and such other lower local courts as may have been or shall hereafter be established by the laws of Guam.*

*(2) The Supreme Court of Guam may, by rules of such court, create divisions of the Superior Court of Guam and other local courts of Guam.*

*(3) The courts of record for Guam shall be the District Court of Guam, the Supreme Court of Guam, the Superior Court of Guam (except the Traffic and Small Claims divisions of the Superior Court of Guam) and any other local courts or divisions of local courts that the Supreme Court of Guam shall designate.*

\* \* \* \* \*

[SEC. 22A. (a) The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act, the legislature of Guam may in its discretion establish an appellate court.

[(b) The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 22(b) of this Act.

[(c) The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.]

SEC. 22A. (a) *The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—*

*(1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide;*

*(2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam;*

(3) *have jurisdiction to issue all orders and writs in aid of its appellate, supervisory, and original jurisdiction, including those orders necessary for the supervision of the judicial branch of Guam;*

(4) *have supervisory jurisdiction over the Superior Court of Guam and all other courts of the judicial branch of Guam;*

(5) *hear and determine appeals by a panel of three of the justices of the Supreme Court of Guam and a concurrence of two such justices shall be necessary to a decision of the Supreme Court of Guam on the merits of an appeal;*

(6) *make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam, including procedures for the determination of an appeal en banc; and*

(7) *govern attorney and judicial ethics and the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law.*

(b) *The Chief Justice of the Supreme Court of Guam—*

(1) *shall preside over the Supreme Court unless disqualified or unable to act;*

(2) *shall be the administrative head of, and have general supervisory power over, all departments, divisions, and other instrumentalities of the judicial branch of Guam; and*

(3) *may issue such administrative orders on behalf of the Supreme Court of Guam as necessary for the efficient administration of the judicial branch of Guam.*

(c) *The Chief Justice of the Supreme Court of Guam, or a justice sitting in place of such Chief Justice, may make any appropriate order with respect to—*

(1) *an appeal prior to the hearing and determination of that appeal on the merits; or*

(2) *dismissal of an appeal for lack of jurisdiction or failure to take or prosecute the appeal in accordance with applicable laws or rules of procedure.*

(d) *Except as granted to the Supreme Court of Guam or otherwise provided by this Act or any other Act of Congress, the Superior Court of Guam and all other local courts established by the laws of Guam shall have such original and appellate jurisdiction over all causes in Guam as the laws of Guam provide, except that such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam under section 22 of this Act.*

(e) *The qualifications and duties of the justices and judges of the Supreme Court of Guam, the Superior Court of Guam, and all other local courts established by the laws of Guam shall be governed by the laws of Guam and the rules of such courts.*

SEC. 22B. The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings[: *Provided*, That for the first fifteen years following the establishment of the

appellate court authorized by section 22A(a) of this Act, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.】

SEC. 22C. (a) Prior to the establishment of the appellate court authorized by section 22A(a) of this Act, *which is known as the Supreme Court of Guam*, the District Court of Guam shall have such appellate jurisdiction over the local courts of Guam as the legislature may determine: *Provided*, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

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(d) Upon the establishment of the appellate court provided for in section 22A(a) of this Act, *which is known as the Supreme Court of Guam*, all appeals from the decisions of the local courts not previously taken must be 【taken to the appellate court】 *taken to such appellate court*. The establishment of that appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division of the district court on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

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#### ADDITIONAL VIEWS OF MR. UNDERWOOD

H.R. 521, will amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam. H.R. 521 reflects changes suggested at both the local and federal levels throughout the past six years that Congress has been deliberating the issue. The original version of this legislation was introduced in the 105th Congress and was titled the Guam Judicial Empowerment Act. The legislation was needed to clarify and insulate Guam's judicial branch from interference by the executive and legislative branches of the government of Guam.

The Supreme Court of Guam was created in 1992 with the local enactment of the Frank G. Lujan Memorial Court Reorganization Act. The Act was the culmination of bipartisan efforts from locally elected officials, close collaboration with the legal community, and ten years worth of public input. It was a significant endeavor because it reflected another milestone in Guam's self-governance. Twenty years earlier, in 1973, Guam's leaders made their first attempt at creating a Guam Supreme Court but the Court's existence was short lived.

A 1977 ruling by the U.S. Supreme Court—*Territory of Guam v. Olsen*, 431 U.S. 195—found Guam's Supreme Court to be inorganic. In *Olsen*, the Court held that Guam's Organic Act did not authorize the transfer of appellate jurisdiction from the appellate division of the District Court of Guam to a locally established appellate court.

In response to *Guam v. Olsen*, Congress passed the 1984 Omnibus Territories Act. The Act amended Guam's Organic Act allowing the Guam Legislature to create an appellate court to hear all cases in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. The Act, however, did not provide a structure for a newly created judicial system once the appellate court was established. Nor, did the Act mention that the responsibility should be left to the Guam Legislature.

In 1992 the 21st Guam Legislature unanimously passed Public Law 21-147, the Frank G. Lujan Memorial Court Reorganization Act. The Act reestablished the Supreme Court of Guam to serve as the highest appellate court on the island. The author of the Frank G. Lujan Memorial Court Reorganization Act has stated, in testimony submitted to the Committee in 1997, that it was the intent of the Guam Legislature to make the Supreme Court of Guam the highest local court and be vested with those powers traditionally held and exercised by the highest court of a jurisdiction.

In authorizing the creation of a Guam Supreme Court however, the Congress unintentionally left the newly created court subordinate to Guam's other two branches of government. Guam's executive and legislative branches are established in the Organic Act, which in lieu of an adopted constitution serves to provide the



framework and powers for the island's executive and legislative branches. Because the judiciary was established in Guam law, some theorized that the judiciary was therefore subject to changes based upon shifts in the majority control of Guam's legislature. The Honorable Joe T. San Agustin, presided over the debate of the enabling Act as Speaker of the Guam Legislature. In testimony which he submitted to this Committee during its May 2002 hearing, San Agustin writes, "There was no controversy then concerning Judicial oversight by the Supreme Court, and administrative and policy-making authority by the Supreme Court over the lower courts. These are relatively new issues, but we considered these settled issues in 1993 when the enabling legislation was passed."

In 1996, the Guam Legislature took its first steps interfering with the Judiciary. Public Law 23-86 removed the Supreme Court's authority over personnel matters within the Judiciary and created two parallel court systems. The Legislature also considered two other measures which would have removed the Supreme Court's authority over the Superior Court and the other would have rearranged the authority of the Supreme Court making it an appellate division of the Superior Court.

The most recent example of the Judiciary's susceptibility to Guam's Legislature occurred in 1998 during the course of debate over controversial comprehensive solid waste management legislation. A non-germane rider removing the Supreme Court's authority over the lower courts was attached to the bill despite objections that the rider did not have the benefit of public input. The Governor of Guam allowed a pocket veto of the solid waste management legislation and expressed his disapproval of the manner in which the controversial rider was attached to a crucial piece of legislation. In his message to the Legislature's Speaker, the Governor reiterated his support for changes to Guam's Organic Act to make the Judiciary a co-equal independent branch of Guam's government.

In January 2002, the Ninth Circuit Court of Appeals affirmed a Supreme Court of Guam decision to invalidate the aforementioned Guam law, based upon a claim the Governor of Guam pocket-vetoed the enacting legislation. This decision has allowed the Supreme Court to reestablish itself, administratively, as the highest court within the Judiciary. A Unified Judiciary Committee, composed of the Chief Justice of Guam, two Supreme Court Associate Justices, the Presiding Judge of the Superior Court, one Judge of the Superior Court, the Administrator of the Supreme Court, and the Administrator of the Superior Court, has since been established by the Supreme Court of Guam. The Ninth Circuit's decision however does not provide any further protection to the Judiciary from future meddling by the legislative or executive branches. Establishing the Supreme Court of Guam within Guam's Organic Act will make the Judiciary a co-equal branch of government.

Opponents to this legislation have argued it is possible for Guam to protect its judiciary through the adoption of a Guam constitution. Although the authority to establish a constitution was authorized by Congress in 1976 and remains in place today, one has not yet been adopted. Guam has made attempts to adopt a constitution, but unresolved questions about the island's future political re-

lationship with the United States took precedence over approving a constitution. In the absence of a Guam constitution, it is necessary to establish Guam's Judiciary within the Organic Act thereby making it a co-equal branch of the Government of Guam.

H.R. 521 continues to receive support from two consecutive Administrations. In 1998, the Clinton Administration had no objection to the legislation, after making clarifying recommendations. At the House Resources Committee hearing on May 8, 2002, Department of Interior's Deputy Assistant Secretary for Policy and International Affairs, the Honorable Chris Kearney, reaffirmed the Interior Department's previous position. The Bush Administration official acknowledged that Guam had a bifurcated local court system at a time when virtually all states had unified court systems. He went on to say, "The structure of Guam's local judiciary is largely a self-government issue for Guam. As such, opinion from Guam should be given the greatest consideration, as long as issues of overriding Federal interest are not involved \* \* \* A number of suggestions were made for improving the bill and harmonizing it with the Federal court system \* \* \* The Administration, therefore, has no objection to the enactment of H.R. 521 in its present form."

The Conference of Chief Justices (CCJ), which is an organization comprised of the chief justice or chief judge of the highest court of each State, the District of Columbia, and other U.S. Territories, has also reaffirmed their support for H.R. 521. CCJ's position is again reflected in Resolution 17, adopted during CCJ's Midyear Meeting in January 2001 and submitted to the Resources Committee in May 2002. The Resolution maintains its strong support for congressional efforts, "to assure by legislation the independence of its (Guam) judiciary and to maintain its judicial branch as a separate and co-equal branch of government."

Currently, Guam's judiciary is not a co-equal branch of government. Its court system is an anomaly when compared against existing courts systems found throughout the United States. This aberration can only be corrected by amending the Organic Act of Guam to establish the Supreme Court of Guam as the highest authority and to ensure that the Judiciary is free from further political interference.

ROBERT A. UNDERWOOD.

